

REMARKS/ARGUMENTS

Claims 1-30 stand rejected in the outstanding Official Action. Claims 1, 11 and 21 have been amended and claims 8, 9, 18, 19, 28 and 29 cancelled without prejudice. Therefore, claims 1-7, 10-17, 20-27 and 30 remain in this application.

Applicants note that an applicant Information Disclosure Statement was submitted on June 5, 2002 and yet no copy of this document has been returned by the Patent Office indicating that the prior art addressed therein was considered by the Examiner. Clarification and return of a copy of the PTO Form 1449 submitted with the Information Disclosure Statement and properly initialed and dated by the Examiner is respectfully requested.

The drawings stand objected to in section 3 of the Official Action as allegedly failing to comply with Rule 84. Applicants agree that the same reference number has been utilized for two separate structures, both in the drawings and in the specification. Applicants enclose herewith amendments to pages 11 and 12 of the specification and replacement sheets of drawings in which the display is numbered 65 and the user input/output driver remains identified as character 64.

The drawings also stand objected to because "Internet 2" is not labeled with a reference character in Figures 2, 3 and 5. Applicants include corrected Figures 2 and 3, but Figure 5 does not represent an internet connection and rather is directed to a message tag as discussed in Applicants' specification.

Applicants have enclosed replacement sheets properly identified as such and requests that these sheets of drawings be substituted for the originally submitted drawings in this application.

AMENDMENTS TO THE DRAWINGS

Please substitute the attached eight (8) sheets of replacement drawings for the drawings originally filed.
)

The specification stands objected to with respect to minor informalities on pages 12 and 18. The above informalities have been corrected, thereby obviating any further objection to the specification.

Claims 11-20 stand rejected under 35 USC §101 as being directed to non-statutory subject matter. The Examiner points out that Applicants have failed to recite “a tangible medium to support the program.” Applicants have amended independent claim 11, from which claims 12-17 and 20 depend, so as to indicate that it is a “computer program product recorded on a computer readable medium for use by” In view of the above amendment, Applicants have recited a tangible medium to support the program, thereby obviating the rejection under 35 USC §101.

Claims 1, 2, 4, 7-12, 14, 17-22, 24 and 27-30 stand rejected under 35 USC §102(e) as being anticipated by Cheng (U.S. Patent 6,151,643). Applicants have amended independent claims 1, 11 and 21 to include the limitations of claims 8/9, 18/19 and 28/29.

Applicants’ invention provides a major benefit relating to managing the load on a server from which a file download is made and particularly prioritizing which computers are triggered to perform download attempts. The Examiner argues that with respect to claims 9, 19 and 29 (on page 5 of the Official Action), that the all or nothing “priority” taught in Cheng, i.e., “send now or send never” is still considered a “priority list under its broadest definition.” Applicants dispute this contention as one of ordinary skill in the art would not considered the all or nothing taught in Cheng to be a priority level as to “when” an update is to be sent since Cheng teaches only a tag which says send or do not send, without any priority among the sent updates.

However, Applicants have amended independent claims 1, 11 and 21 to clearly recite that the priority level controls selection of one of “a plurality of different finite delay periods.” This eliminates from claim coverage the subject matter of Cheng which specifies only two priority levels, one of which **is not** a “different finite delay period.” As a result, Cheng, at best, teaches only one finite delay period (with the same period being used in all updates) and not Applicants’ claimed “plurality of different finite delay periods.” Accordingly, independent claims 1, 11 and 21 clearly define over the Cheng reference.

Support for the recitation of different finite delay periods may be found in Applicants’ specification on page 13, lines 10-23, in which an e-mail is sent immediately (a minimal finite delay, as nothing ever happens instantaneously), “after a predetermined delay, such as an hour” or sent “after a randomly chosen time delay.” As a result, Applicants’ specification provides ample support for the limitation “a plurality of different finite delay periods.”

In view of the above limitations, Cheng fails to teach Applicants’ independent claims 1, 11 and 21 or claims dependent thereon. Accordingly, any further rejection under 35 USC §102 is respectfully traversed.

Claims 3, 13 and 23 stand rejected under 35 USC §103 over Cheng in view of Neal (U.S. Patent 6,192,518). Claims 3, 13 and 23 depend respectively upon claims 1, 11 and 21, and therefore the above comments distinguishing over the Cheng reference is herein incorporated by reference.

There is no disclosure that the Neal reference teaches the claimed “plurality of different finite delay periods” or contains any suggestion of this limitation. Moreover, the Examiner has not pointed out how or why there is any motivation for one of ordinary skill in the art to combine

the Cheng and Neal references. Accordingly, there is no basis for any rejection of claims 3, 13 and 23 under 35 USC §103 over the Cheng/Neal combination.

Claims 5, 6, 15, 16, 25 and 26 stand rejected under 35 USC §103 as unpatentable over Cheng in view of Hodges (U.S. Patnt 6,035,423). Inasmuch as claims 5, 6, 15, 16, 25 and 26 depend from claims 1, 11 and 21, the above comments regarding the Cheng reference are herein incorporated by reference.

The Examiner has not alleged that Hodges supplies the teaching of a plurality of “different finite delay periods” which is missing from Cheng. Therefore, neither reference teaches the limitations of the independent claims from which claims 5, 6, 15, 16, 25 and 26 depend. Moreover, the Examiner has not pointed out how or why there is any reason or motivation for combining the cited references. Accordingly, any further rejection of these claims over the Cheng/Hodges combination is respectfully traversed.

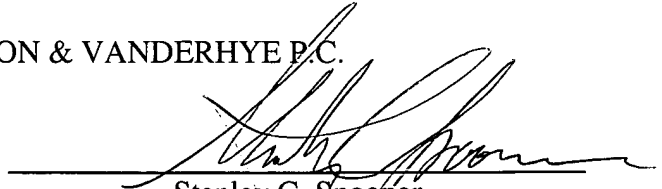
Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that remaining claims 1-7, 10-17, 20-27 and 30 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicants’ undersigned representative.

BARTON et al
Appl. No. 09/944,114
December 3, 2004

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:



Stanley C. Spooner
Reg. No. 27,393

SCS:kmm
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100